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THE HAWAIIAN JUDICIARY.

The Hawaiian Islands have been prominently before the American public for several years on account of their proposed annexation to the United States. But they had long previously been objects of interest to a large portion of the American people, not only on account of the excellence of their climate, the beauty and grandeur of their scenery, and their close commercial relations with the United States, but also and more especially because of their strategic position at the cross-roads of the Pacific, and because they have been a favorite field of American missionary effort. They now furnish the one conspicuous example of a nation graduated from the field of missions as substantially raised from a state of barbarism to one of Christian civilization; moreover, they furnish the only example of a colony thoroughly American in spirit on foreign soil. At some future time they may be known, to the student at least, as a contributor of an interesting and instructive chapter in the history of constitutional government and the history of civilization. Unlike most aboriginal races of other islands and the new continents, whose lands have been seized by foreign powers and upon whom foreign governments and laws have been forced, the Hawaiian people not only have always maintained their independence and have since 1840 enjoyed a constitutional government having treaty and diplomatic relations with the great nations of the earth, but they also present a complete history of a growth from absolute government by a despot to constitutional government by the people.

This history is in some respects a parallel of English history. For instance, in the islands to the southwest inhabited by other branches of the Polynesian race and from some of which the Hawaiians originally came, there existed the mark or community system of tenure and government similar to that which existed among the Anglo-Saxons before their emigration to England; and the Hawaiians themselves after their immigration to these islands passed through various stages of the feudal system much as did the early English. So, too, the evolution of the various departments of government in Hawaii is very sug-

gestive of English history,—the gathering of counselors about the king, the gradual enlargement of their advisory functions into legislative powers resulting in the formation of the upper branch of the legislative body; and the gradual separation of the legislative and judicial powers of this body resulting finally in the exercise of the latter by a distinct set of persons, the judiciary.

Of course Hawaiian constitutional development since the discovery of the islands has been rapid and has been due chiefly to foreign influence. It has, nevertheless, been a growth, the natural consequence of the adoption of foreign ideas by the natives, and the working together of foreign residents and natives as one people, not the result of forced foreign influence from within or without. And, strange to say, the movement towards the establishment of individual rights and representative government was from the kings and high chiefs rather than from the petty chiefs or common people, such was the wisdom and magnanimity of the former during the Kamehameha dynasty (1782-1872). Those kings and chiefs were wise enough to seek and follow the advice and ideas of the better class of foreigners and to see that the welfare and independence of their nation could be maintained only by keeping pace with advancing civilization. They were magnanimous enough to sacrifice their own powers and rights for the good of their people. After the extinction of the Kamehamehas, the tendency of the crown was backward, and the so-called revolutions during the reigns of Kalakaua and his sister, Liliuokalani, terminating in the abolition of the monarchy, were but resistances of the better classes of whites and natives against the attempts of those sovereigns to resume the absolute powers their predecessors had so wisely and generously surrendered.

Hawaii is now a completely organized republic, the product of the past. In this brief paper an attempt will be made to outline the evolution and present organization and working of only one of its departments—the Judiciary.

The Hawaiians migrated to these islands probably about the end of the fifth century. From that time they were divided into a number of separate kingdoms until the close of the eighteenth century, when, after four centuries of almost constant warfare, they were united under one government. This was the achievement of the great Kamehameha I. During this period there grew up a feudal system of government and land tenures. The king was lord paramount and owned the country. The chiefs

were mesne lords, and the common people, tenants paravail. Each subject held land of his immediate superior in return for military and other services and the payment of taxes or rent. Under this system all functions of government, executive, legislative and judicial, were united in the same persons and each function was exercised not consciously as different in kind from the others but merely as a portion of the general power possessed by a lord over his own. There was no distinct judiciary and yet judicial forms were to some extent observed.

The usual method of obtaining redress was for injured parties or their friends to retaliate, as in cases of assault or murder. The offender might, however, escape by fleeing to a city of refuge, as under the old Jewish law. In case of theft the injured party might go to the thief's house, if known, and take what he could find—the thief, though the stronger of the two, being restrained by public sentiment from offering resistance. This practice of taking the law into one's own hands calls to mind the remedies by distraint, recaption and abatement of nuisances among civilized nations. If the wrong-doer was of higher rank than the injured party or if he belonged to a different chief, the usual course was to apply for justice to the king or to the chief upon whose land the accused resided. Then, sitting cross-legged before the judge, each party presented his own case, without witnesses, lawyer or jury. An appeal from the judgment lay to any superior chief or to the king. Thus there was in a certain sense a series of courts, local, superior and supreme, held by the petty chiefs, the high chiefs and the king respectively. The personal and official characters of the judge were not distinguished. There was no distinction between public and private wrongs. The penalty or relief might be the restoration of property, the specific enforcement of a right, the imposition of a fine, banishment, torture, death, or other punishment, in the discretion of the judge, or the offender might be granted immunity from punishment by the exercise of the pardoning power by the judge.

There were also ecclesiastical tribunals. These had jurisdiction to some extent over civil wrongs as well as over religious matters. Their trials were by ordeal—fire and water. One form of water ordeal was this. A calabash of water was placed before the suspected person. The priest offered a prayer. The accused was required to hold his hands, with fingers spread out, over the calabash. If the water shook, the accused was guilty, otherwise he was innocent. (The conscience of the accused, if

guilty, may have caused his hands to shake and thus produce a tremulous appearance in the water.) A form of ordeal by fire was as follows. Three *kukui* nuts (candle-nuts) were broken. One was thrown upon a fire. While it burned, the priest uttered a prayer. So with the other nuts. If the wrong-doer, who probably had learned, by proclamation, that the trial was to take place, appeared and confessed before the last nut was consumed, he was simply fined. Otherwise proclamation was made that the offender would be prayed to death. Then, doubtless overcome by superstitious fears, he would pine away and die. It will be noticed that the ascertainment of the truth was left to the guilty conscience of the accused, and the presumption was in favor of innocence, the Hawaiian ordeals differing thus from most forms of ordeal found among other races.

An idea of the nature of the cases that were likely to arise may be obtained from the character of the laws. These were either customary or declared by the king and proclaimed by heralds. The taboos, both religious and social, formed the most complex and oppressive body. Next in number but first in importance came the laws of real property upon which the whole system of government was based, including the laws of tenure, taxation, fishing rights and water rights, the last being so important as to give their name to laws in general. Laws relating to personal security were few, the violations of which were considered more as torts than as crimes. There was little occasion for the law of contracts, for estates in real property were transferred by favor of the king or chiefs rather than by contract; and personal property, of which there was little, was exchanged only by barter, in which case the bargain was not binding until delivery of the goods and expression of satisfaction by both parties and then it became irrevocable. Domestic relations were little regulated by law; parents might do as they pleased with their children, and marriage and divorce rested upon the consent of the parties or their relatives.

Under the wise and strong rule of Kamehameha I. (1782-1819), the central government was greatly strengthened, but with a view to the best interests of all, not merely the gratification of a despotic ambition; the laws were made more uniform throughout the islands and were rigidly enforced; peace prevailed everywhere; the oppression of the chiefs was checked; the person and property of the common man became comparatively secure; and the King gathered about him the ablest and best chiefs as a council of advisors—the embryo of a future

House of Nobles and Supreme Court. During this reign many foreign vessels touched at the islands and as a result largely of the influences, good and bad, thus brought to bear upon the natives, they lost faith in their idolatrous religion and on the death of Kamehameha abolished it as a state religion, thereby terminating all ecclesiastical jurisdiction. Religious matters continued, however, to be subjects of civil jurisdiction, chiefly for the suppression of the idolatry that remained among the people.

During the next twenty years (1820-1840) the good forces set in motion by Kamehameha I. continued to operate. Christianity was introduced the year after his death and schools were established. Under their new religion and learning, the chiefs became more considerate of the rights of the common people, and the common people grew to realize more fully that they had rights; all became more tolerant in their religious views; a few written laws were published; there developed a conception of judicial as distinguished from other functions of government; trials were conducted with greater formality and in capital cases even the jury was introduced. In 1839 a course of lectures on the science of government was delivered to the chiefs at their request. In that year were issued the Edict of Toleration and the Declaration of Rights, Hawaii's *Magna Charta*, and in the following year (1840) the first constitution was promulgated.

These documents guaranteed religious liberty and removed religious matters from civil jurisdiction as civil matters had twenty years before been removed from ecclesiastical jurisdiction. They also guaranteed personal and property rights. Before the reign of Kamehameha I., tenants might be removed at will, and, although they were usually allowed to hold for life, there was no assurance that upon their death their descendants would be allowed to hold in their places; and upon the death of a king his successor generally made a redistribution of lands. By 1840, however, it had become pretty well established by custom that a tenant or his descendants should not be removed except for cause. This custom was made positive law by the Declaration of Rights; and between 1845 and 1855 in pursuance of appropriate legislation and upon proof of claims before a special court, all lands occupied by the king, chiefs and common people were secured to them respectively in fee simple. Titles and laws of real property, the recording system included, have ever since been substantially the same as in the United States.

The constitution also outlined a system of government. We have seen that Kamehameha I. gathered about him a council of the ablest chiefs. With these he consulted more or less in matters of state, whether of an executive, legislative or judicial nature. Owing to certain weaknesses of his son and successor, he appointed by will a Premier, to have power coördinate with that of the king, each to have a veto on the acts of the other, as was the case with the early Roman consuls. These two acted during the next twenty years as the king alone had previously acted, and the council of advisors grew in power. The different functions of government had become more clearly distinguished, although still exercised by the same persons. Under the constitution, the council of chiefs became the upper house (Nobles, since evolved into a Senate,) of the legislative body, and the king, premier and four of the chiefs became the Supreme Court. The governors of the various islands, who were high chiefs, continued as before to exercise the jurisdiction of superior courts, by custom and inference rather than by the express provisions of the constitution. There were also local or district courts.

The provisions of the constitution were meager and the courts were left for seven years more to evolve, with little aid from statutes. They were now recognized as a distinct department of government, though not held by distinct persons, but their procedure and powers were uncertain. The distinction between torts and crimes came gradually to be recognized, at first not by trying the wrong-doer in two separate actions, one civil and the other criminal, when the wrong was both public and private, but by dividing the fine or damages between the government and the injured party. Finally, however, the actions themselves were distinguished and tried separately, first in foreign cases and then in Hawaiian. For the policy of the courts was to apply in each case as far as possible the law to which the offender had been accustomed. This meant in most foreign cases the law of the United States or England so far as it was known. Similarly, the distinction came gradually to be recognized between law cases,—civil and criminal, and chamber cases,—equity, admiralty, probate and bankruptcy. So, as to the jury. After this became established it was frequently employed in all sorts of cases, and sometimes upon questions of law as well as of fact, but gradually, partly by usage, partly by statute, it came to be confined to questions of fact and almost exclusively to law cases. Complaints and answers came to be more formal and to be written, and demurrers and special pleas were finally allowed. The judges

still possessed much discretionary power. They might punish offenses not defined by law and impose a great variety of penalties, and continued to exercise occasionally even the pardoning power. As foreign cases increased with the growing foreign population, the need of judges learned in foreign law became more pressing and finally the Governors, who as we have seen acted as superior judges, appointed foreign judges to sit as their substitutes in foreign cases. These judges issued rules of pleading and practice. Then came the comprehensive Act of 1847, embodying the results of the experiences of the preceding seven years.

This Act, besides setting forth the organization and jurisdiction of the courts, and rules of pleading and practice, provided that the judges should be independent of the executive department. But this was understood to mean, not that judicial and executive, to say nothing of legislative, functions should not be exercised by the same persons, but that the functions themselves when exercised should be kept separate and distinct, and be exercised independently. For instance, the King in his executive capacity was not to interfere with a judicial act of a Governor. The Governors continued to try many cases. The King, Premier and four Nobles continued to constitute the Supreme Court. The new constitution of 1852, however, practically completed the separation of the various departments. It provided that legislative and judicial functions should not be united in any individual or body. Nevertheless, under other constitutional provisions the upper house has ever since been a court of impeachment, though no case of impeachment has ever been tried in these islands; and jurisdiction over election cases remained in the legislative branch of the government until 1894, when by the constitution of the Republic it was turned wholly over to the courts,—the separation of judicial and legislative functions in this respect following the English practice and being carried further than in the United States. The constitution of 1852 also practically completed the separation of judicial and executive functions. It abolished the Supreme Court consisting of King, Premier and four Nobles. We have seen that the Governors acted as superior judges, and that they had already appointed foreign judges to act for them in foreign cases. Two such judges had been appointed at the capital. These with a third judge, a Hawaiian, became under the Act of 1847, the superior court not only for the island on which the capital was situated, but for all the islands, and for Hawaiian as well as foreign cases. It had both original and appellate jurisdiction.

On account of the learning and ability of its members, it became in effect the supreme court, and in 1852, it was made the Supreme Court in name as well as in reality. The judges of this court might sit singly or together and were severally to "go circuit" and sit with the local circuit judges. An appeal lay from one of the judges to the full court. In practice all the judges sat together, except on circuit, until 1869. After that they sat singly and appeals were taken to the full court. It was unsatisfactory to appeal to a court of only three members, one of whom had rendered the decision appealed from, and so in 1886 the number was increased to five. This, however, was not much more satisfactory, and in 1888 the number was reduced to three again, and the evil was remedied in 1892 by making the Supreme Court almost purely an appellate court, original cases being left to the Circuit and District Courts.

As shown above, prior to the Act of 1847, the courts possessed much discretionary power in both civil and criminal matters, but in practice followed the common law more and more. That Act expressly provided that in civil matters the courts might adopt the reasonings and analogies of the common law and of the civil law, when deemed founded in justice and not in conflict with Hawaiian laws and usages. Under this authority the courts in fact followed the common law, when applicable,—deliberately departing from it on probably not more than a dozen points in forty-five years and then only where it had grown obsolete or had been repealed by statute in most other common law countries. Finally, in 1892, it was provided by statute that in civil matters the common law, as ascertained by English and American decisions, should be the common law of these islands except as otherwise established by Hawaiian law, judicial precedent or national usage. As to criminal matters, a penal code was enacted in 1850, since which date penal offenses have been wholly statutory,—with penalties practically confined to fines and imprisonment.

Having thus traced in outline the evolution of the Hawaiian Judiciary, let us now look at it as it exists to-day.

The Hawaiian Judiciary comprises the three sets of courts usually found elsewhere—a supreme court, superior courts of record, and local courts. They are called the Supreme Court, the Circuit Courts, five in number, and the District Courts, twenty-nine in number. They are held or presided over by Justices, Judges and Magistrates, respectively, as they are called for convenience.

The District Magistrates, sitting without a jury, have criminal jurisdiction of misdemeanors, that is, in general, of offenses the penalty for which is imprisonment for not over two years, and civil jurisdiction in cases involving values up to three hundred dollars except cases of slander, libel, malicious prosecution, false imprisonment, seduction, breach of promise of marriage, and cases involving title to real estate. The jurisdiction for purposes of arrest, to compel the attendance of witnesses and for some other purposes, extends over the entire circuit within which the district is situated. If an offense is committed in one district and the accused is arrested in another, he may at his option and with the consent of the prosecuting officer, be tried in the district in which he was arrested. If the offense is not of a serious nature and there is no reason to suspect that the accused will attempt to elude justice, he may be merely summoned to appear, as in civil cases, without being arrested, unless an arrest is expressly requested by the complaining party. The civil jurisdiction is exclusive up to fifty dollars and concurrent with that of the Circuit Courts from fifty to three hundred dollars. A general appeal lies in all cases, civil and criminal, to the Circuit Court of the circuit in which the district is situated, or an appeal solely on points of law may be taken either to the Circuit Court or to the Supreme Court.

The Circuit Courts sit at regular terms with or without a jury, as the case may be, for the trial of most original law cases not begun in the District Courts and all appealed cases brought to them from the District Courts. Their jurisdiction for purposes of arrest, to compel the attendance of witnesses, and for some other purposes, extends over the entire Republic. Twelve terms, not exceeding four weeks each, are held each year, that is, one each month,—four in the first circuit and two in each of the others. Thus no two terms are held at the same time and the attorneys, most of whom reside at the capital, may conveniently attend any or all of the terms. The Circuit Judges sit without a jury in chambers throughout the year, chiefly in equity, admiralty, probate and bankruptcy cases. Divorce cases are regarded as law cases and are tried by the court at regular term, though without a jury. Exceptions lie from the Circuit Courts in law cases on points of law, and a general appeal lies from a Circuit Judge in chambers, to the Supreme Court.

The Supreme Court consists of a Chief-Justice and two Associate Justices. It holds four terms of three weeks each annually, one the last month of each quarter. It hears appeals on

points of law from the District Courts, exceptions on points of law from the Circuit Courts, and general appeals from the Circuit Judges. Writs of error also lie to the lower courts but are seldom resorted to as exceptions and appeals are found more convenient and satisfactory methods of bringing cases to the Supreme Court. The Supreme Court has original jurisdiction over cases against the government, election cases, and the issuance of certain writs, such as *habeas corpus*, prohibition, *mandamus* and *certiorari*, though the use of these by the Supreme Court is confined chiefly to the aid of its appellate jurisdiction. If a Justice is absent or disqualified in any particular case, his place for that case may be filled by a Circuit Judge or a member of the bar, and no party may be compelled to have his appeal disposed of by a court of less than three persons. There is or was formerly in Connecticut a somewhat similar provision for the substitution of Superior Court Judges for Supreme Court Judges in certain contingencies. We have also a provision that if a point not raised or argued by counsel shall be deemed material by the Court, a decision shall not be rendered upon that point until an opportunity has been given counsel to argue it. The Justices wear gowns, thus following the practice of the English Justices and those of the Supreme Courts of the United States and of the State of New York. These gowns are of black silk and patterned after those of the Justices of the United States Supreme Court. The Supreme Court and the First Circuit Court sit only at the capital and occupy, with clerk's offices and library, the second floor of a spacious and architecturally beautiful building known as the Court House.

There is a Clerk of the Judiciary Department, under whom are three Deputy Clerks, for the first circuit and one for each of the other circuits. There are also stenographers and interpreters, the latter often playing very prominent parts in trials on account of the large number of different races of which our population is composed, Hawaiians, Portuguese, Japanese, Chinese and others, besides Americans, English and Germans. The executive officers of the courts are a Marshal of the Republic, Sheriffs of the several circuits, Deputy Sheriffs of the several districts, and police officers and constables. Methods of service of process and enforcement of judgments and decrees, as well as the prison system, are for the most part similar to those generally prevailing in the United States. Prisoners are obliged to work, mostly on the public roads. The pardoning power is vested in the President, with the advice of the Cabinet and a Council of State.

The Justices and Judges are appointed by the President with the approval of the Senate; the Magistrates by the President with the approval of the Cabinet. They have never been subjected to popular elections. The Justices hold office during good behavior, that is, for life; the Judges for six years; the Magistrates for two years. The Justices and Judges may be removed only by impeachment, or, upon a recommendation of the Executive Council (President and Cabinet), by a two-thirds vote of all the elective members of the Legislature (Senators and Representatives) sitting together and after notice to the Justice or Judge and an opportunity given him to be heard. The Chief-Justice receives \$6,000 a year; each of the Associate Justices, \$5,000; their salaries cannot be diminished during their term of office; the Circuit Judges receive, some, \$3,000, others \$4,000 each; the Magistrates from \$300 to \$2,500 each. In all these respects—appointment, tenure and salaries—we follow the Federal and English systems rather than those of the great majority of the States. As a consequence of this as well as of public opinion, the influence of the bar and the good sense of the appointing power, the Hawaiian Judiciary has always maintained a much higher standard than could have been possible under a system of popular elections, short terms and small salaries, such as exists in many of the States. As a rule the best and ablest men who would accept office have been appointed, and these when appointed have always shown themselves independent. Even during the reigns of the last two sovereigns when scandalous conduct was at times so prevalent in the executive and legislative branches of the government, the Supreme Court remained unimpaired and was looked to by the people as their one impregnable bulwark. These sovereigns, much as they desired to subject the judiciary to their control, dared not make the attempt until the final act of the last sovereign, which proved futile and cost her her throne.

The Justices of the Supreme Court are all of American descent. The Chief-Justice and First Associate Justice are graduates of Yale College; the former has also received the honorary degree of Doctor of Laws from Yale University; the latter graduated also from the Yale Law School. The Second Associate Justice is a graduate of Harvard College and the Boston Law School. The Circuit Judges comprise one Portuguese, one Hawaiian and three Americans, one of whom is a graduate of the Yale Law School. The District Magistrates are mostly Hawaiians, but some of them are Americans or English.

Our jury system has some peculiar features. As above

stated, the Circuit Courts alone sit with a jury and then almost exclusively in law cases, occasionally upon certain issues of fact in probate and bankruptcy cases and never in equity, admiralty or divorce cases. We have the racial and mixed jury system. Criminal actions against persons of foreign descent (whether naturalized or alien) and civil actions between foreigners are tried by foreign juries. Similarly, criminal actions against Hawaiians (whether of the whole or mixed blood) and civil actions between Hawaiians are tried by Hawaiian juries. Civil actions between Hawaiians and foreigners are tried by juries composed of six Hawaiians and six foreigners. Compare this with the jury *de mediatate linguae* of English history. The jury numbers twelve, but an agreement of nine is sufficient for a verdict. This is the rule in all cases, civil and criminal, and has been for fifty years. It was the rule previously in all but capital cases. It has worked most satisfactorily. The jury may be waived in all civil cases and in practice is waived in a majority of such cases. The constitution of the Republic (1894) authorized the Legislature to provide for a waiver of jury in all criminal cases also, except capital cases. This was designed chiefly to obviate the expense of jury trials in minor cases, especially those appealed from the District Courts, and appropriate legislation has since been enacted permitting a waiver of jury in such cases. Until recently the relations between judge and jury were much the same as they are in the Federal and English courts; but in 1892 a statute was passed, similar to statutes passed in many of the United States, prohibiting the judges from commenting upon the weight of the evidence or the credibility of the witnesses. This, however, does not prevent the setting aside of a verdict as against the evidence and the granting of a new trial, or the directing of a verdict or the entry of a judgment *non obstante veredicto* in a proper case. The doctrine of "scintilla of evidence" has never obtained here. And judgments *non obstante* have always been granted here for the defendant as well as for the plaintiff and upon the evidence as well as upon the pleadings, if the material facts were undisputed. As a rule our juries have performed their duties well and our annals are comparatively free from the classes of verdicts, especially in criminal cases, which have so often in the United States tended to bring the jury system into disrepute. Such verdicts however, were somewhat frequent at times during the last two reigns, when race prejudices were aroused.

The grand jury has never existed in these islands. In crimi-

nal cases triable originally before a jury, the accused is first brought before a District Magistrate or a Circuit Judge (in practice generally the former) for examination, and, upon probable cause found, he is committed for trial in the Circuit Court. The Attorney-General then prepares an indictment, which is found a true bill or not as the case may be by the judge of that court.

The same judges sit in both law and equity, as well as in admiralty, probate and bankruptcy cases, but they do so as distinct courts, each with its peculiar procedure. Some features of the code pleading and practice have been introduced, but there has not been that complete fusion of law and equity that is found in some of the American States. Hawaiian procedure is based chiefly upon the English common law and equity procedure, but with the omission of all useless forms and fictions. It is characterized by simplicity and directness. This is indeed true of the whole course of the administration of justice in these islands. Trials, whether in civil or criminal cases, with or without a jury, are as a rule short and to the point—the lawyers attending strictly to business. Few delays are sought or allowed in either original or appealed cases. The Supreme Court, which, as above stated, sits three weeks the last month of each quarter, generally hears all cases put upon its calendar up to the end of the term, unless counsel mutually agree upon a continuance, and decides all or most of the cases so heard and files the decisions, before the next term. The Hawaiian bar is composed of two classes of lawyers, those admitted to practice in all the courts and those admitted to practice in the District Courts only. The former are mostly foreigners, chiefly Americans; the latter mostly Hawaiians. The English distinction between barristers and attorneys does not exist. Nor is there that degree of specialization that is possible in large cities. The Supreme Court, which hears most applications for admission, insists upon a high standard of legal learning as well as satisfactory proof of good moral character. The members of the bar are for the most part men of ability, high character and public spirit, and have always shown deep concern in the proper administration of the various branches of government, often sacrificing lucrative practice for longer or shorter periods to serve the public interests, as occasion demanded, especially in the executive and legislative departments.

As to the laws administered by the courts, these are in general such as might be looked for in the United States, with such

differences in detail as are found in the different States of the Union. There is first the constitution, consisting chiefly of what may be called a "bill of rights" and an outline of the organization of the three departments of government, in this respect resembling the Federal Constitution with its amendments rather than the prolix or quasi-code constitutions of many of the States. Hawaii being one independent State has not the two sets of constitutions, state and federal, and consequently each of the three departments of government has in general the powers and duties of the corresponding branch of both State and Federal Government in the United States. The courts may declare laws unconstitutional, following in this respect the American rule rather than that of the European states which have written constitutions, such as France and Switzerland, where the Legislature decides for itself upon the constitutionality of the laws it enacts. Next come the treaties with foreign nations. Differing from the practice in the United States the Hawaiian courts have always held treaties to be of superior force to statutes, thus rendering it impossible for the legislative branch of government to break faith with other nations. In connection with this it may be added that the Hawaiian courts in the administration of private international law have always favored principles of comity rather than of selfishness or retaliation. And in matters of extradition, even in the absence of treaty provisions upon the subject, alleged criminals are delivered up, upon the production of proper papers and *prima facie* proof of guilt. Next come the statutes. No complete codification has been attempted, except that criminal offenses are wholly statutory. These, consisting of treason, felonies and misdemeanors, are embodied in a penal code and various statutes since passed, and are practically the same as exist generally in the United States. There is also a civil code. This relates chiefly to subordinate bureaus and offices in the executive department and the jurisdiction and practice of the courts, and also contains statutes of frauds, limitations, wills, descent, and some other provisions. Of course, numerous statutes upon all sorts of subjects have been passed at the regular biennial sessions of the legislature. Next comes the case law. This is found in both Hawaiian and foreign reports, and about the same weight is given to Hawaiian and foreign precedents respectively as is given by the courts of one American State to their own former decisions and those of the courts of other states or England respectively. The Hawaiian reports, comprising ten vol-

umes, cover just fifty years. At present a volume is published about once in two years. These Hawaiian decisions resemble the decisions found in the reports of the American States both in the nature of the cases decided and in the law and authorities followed. Both American and English decisions are cited. The Supreme Court library contains about five thousand volumes of reports, text books, digests and statutes. In several instances in America, peculiar weight is given by the courts of a newer State to the decisions rendered in some older State from which many of the inhabitants of the former have come or from which it has borrowed much of its statutory law. Perhaps Hawaii cannot be said to have a parent state in this respect; and yet, from the fact that many of its leading people, including some of its ablest lawyers and judges, have come from Massachusetts or have received much of their education there—coupled with the fact of the high character of Massachusetts' law itself—the law of that State, both statutory and judicial, naturally has been followed in Hawaii more than that of any other one State. The American colony in Hawaii is, indeed, more largely of New England than of Western origin, but as New Englanders cannot long live in a new country without becoming infused with the so-called Western spirit of unconventionality and enterprise, the prevailing character of the people and institutions of Hawaii is not sectional but broadly and thoroughly American.

W. F. Frear.